(1)

Supreme Court, U.S.
FILED

95 7 41 SEP 22 1995

NO.

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LONNIE SNELLING - PRO SE,
PETITIONER.

vs.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ST. LOUIS CITY HOUSING AUTHORITY; HOUSING AUTHTORITY OF ST. LOUIS COUNTY; SAMUEL R. PIERCE-SECRETARY OF H.U.D.; JAMES STRASSNER; QUEEN ESTER STEPHENSON; SHELLEY RENE KEETON; VERA OWENS; LINDA JONES; SHARON WILLIAMS; AND CURTIS, OETTING, HEINZ, GARRETT & SOULE, P.C.
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

RESPECTFULLY SUBMITTED BY,

Lonnie Snelling

LONNIE SNELLING
1518-79th Street
U. City, Mo. 63130
(314) 862-8279
PETITIONER - PRO SE

67 pp

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER PETITIONER'S DUE PROCESS RIGHTS WAS VIOLATED BY LOWER COURT WHEN DENYING REQUEST FOR CONTINUANCE, AFTER ANNOUNCEMENT OF NOT READY:
2. WHETHER CHARGES OF RACIAL DISCRIMINATION LITIGATED IN A PRIOR LAW SUIT, BARS LITIGATION OF SUBSEQUENT CHARGES OCCURRING AFTER JUDGMENT:
3. WHETHER THE USE OF GOVERNMENT REGULATIONS TO DEPRIVE NEGRO-AMERICAN PROPERTY OWNERS OF EQUAL BENEFITS, UNCONSTITUTIONAL:
4. WHETHER PARTY WAIVES RIGHTS TO RECOVER BY DISMISSING PRIOR CLAIM WITHOUT PREJUDICE:
5. WHETHER 42 U.S.C.A. §1985(2) COVERS RETALIATION FOR TESTIFYING AND OR PETITIONING FOR REDRESS IN THE FEDERAL AND STATE COURTS:
6. WHETHER LOWER COURTS DENIED EQUAL PROTECTION AND RIGHT TO REDRESS:

LIST OF PARTIES

PARTIES COUNSEL BELOW

Appellant-Petitioner:

LONNIE SNELLING ..... Pro se

Appellees-Respondents:

Department of Housing and Urban Development

&

Samuel R. Pierce

Wesley Wedemyer- Asst. U.S. Attorney

Housing Authority of St. Louis County

Joe D. Jacobson

Housing Authority of St. Louis City

Charles Ford

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTIONAL GROUNDS	3
STATEMENT OF THE CASES	5
REASONS FOR GRANTING THE WRIT	7
ARGUMENT	9
CONCLUSION	19
CERTIFICATE OF SERVICE	19
APPENDIX	
TABLE OF CONTENTS	A-1
1. Opinion of the U.S. Court of Appeals for the Eighth Circuit	A-2
2. Opinion of the U.S. District Courts for the Eastern District of Missouri	A-6 & 7

TABLE OF AUTHORITIES

	PAGE
CASE LAW:	
Williams v. Estelle, 566 F. Supp. 1376 (1-2)(10th Cir. 1983)	7-9
Boddie v. Connecticut, 91 S. Ct. 780. 787(13)(1971)	7
Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).	7
Snelling v. HASLC, et al., Case #89-1752-C-7	7
Parhlane Hosiery Co. v. Shore, 99 S. Ct. 645 (1982)	8-18
Migra v. Warren City School Dist, BD. of Educ., 104 S. Ct. 892(1)(1984).	8
Nilva v. United States, 77 S. Ct. 431 (1964)	9
Eggelston v. Chicago Journeymen Plumbers, Inc. 657 F. 2d 890(7th Cir. 1981)	10
Lewis v. Texico, Inc. 527 F. 2d 921, 926(2nd Cir. 1975)	11
Voegeli v. Lewis, 567 F. 2d at 96(5) (8th Cir. 1977)	11
Loinaz v. EG & G, Inc., 910 F. 2d 1(5)(5th Cir, 1992)	11
Hansberry v. Lee, 311 U.S. 31 (1940)	11

PAGE

Beary v. City of Rye, 601 F. 2d 62 (2nd Cir. 1979) 12

Buchanan v. Warley, 245 U.S. 60(1917) 13

United States v. United States Gypsum Co. 333 U.S. 364, 395(1948) 14

Buder v. Merill Lynch, Pierce, Fenner, & Smith, 644 F. 2d 690, 694(4)(1981) 15

Manning v. City of Arburn, 953 F. 2d at 1359(7)(11 th Cir. 1992) 15

Lawlor v. National Screen Services Corp. 75 S. Ct. 865, 868(5)(1955) 16

Murphy v. Jones, 877 F. 2d 682, 684 (8th Cir. 1989) 16

Dawkins v. Nabisco, Inc., 549 F. 2d 396, 397(5th Cir. 1977) 16

Cook v. American Maintenance Co., 588 S.W. 2d 171 (1979) 17

Union & Planters' Bamk v, Memphis, 23 S. Ct. 604 (1903) 18

Celotex Corp. v. Catrett, 106 S. Ct. at 2553(7) (1986) 19

MISSOURI RULES:

Rule 67.03 19

U.S. CONSTITUTIONAL AMENDMENTS:

AMENDMENTS 5 & 14th 8

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Lonnie Snelling, Pro se, prays that a Writ of Certiorari issue to review the opinions of the United States District Courts for the Eastern District of Missouri and affirmed by the United States Court of Appeals, For the Eighth Circuit, in this matter.

Upholding the District Courts' decisions that no constitutional violations have occurred, that Petitioner's claims was the same as those brought in 1989 and that Petitoner waived his rights to recover by dismissing claim Without Prejudice in State Court.

OPINION BELOW

The opinion of the Eighth Circuit Court of Appeals is unpublished, issued April 17, 1995, but is included in Appendix at A-2.

The unpublished judgments of the United States District Courts, issued July 1, 1993 and Sept. 27, 1993, appears in Appendix at A-6 and A-7.

The petition for rehearing with suggestions for rehearing En banc filed on April 24, 1995, and Petition for rehearing was denied on May 25, 1995, appears at A-41 of the Appendix.

Motion for extension of time to file Petition For a Writ of Certiorari granted on September 1, 1995, to include Sept. 22, 1995, appears as Exhibit #5 .

JURISDICTIONAL GROUNDS

On April 17, 1995, the U.S. Court of Appeals for the Eighth Circuit upheld the District Courts in Missouri by claiming that the First Trial Judge didn't violate Petitioner's Due Process Rights and that the 1991 judgment bars any claim of discrimination concerning the Sec. 8 Programs.

This Court's Jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

The Courts below jurisdiction was invoked pursuant to 28 U.S.C. §1331, 1343, 42 U.S.C.A. §1981, §1982, §1983, §1985(2)(3), §1986; and Constitutional Amendments 5 and 14th.

STATEMENT OF CASE

A complaint was filed in United States District Court, For the Eastern District of Missouri, Eastern Division on September 23, 1991, Petitioner challenge the way the Section 8 Certificate/Voucher programs was being administered by the Housing Authorities toward NegroAmerican property owners, That H.U.D. was put on notice and failed to protect. Shortly after petitioner filed the above complaint, HASLC through its agents, between Oct. 1991 thru April 1992, forced all eligible Section 8 participants under its control, from Units owned by Patitioner! whom is a Negro-American.

On April 27, 1992, petitioner motion the First trial Court, for leave to amended petition to add other claims that had occurred since the filing of the Petition. On June 17, 1992, that motion was denied on the grounds that the other claims would

be confusing to try with those against the government defendants. See Exhibit #1, page #6 (Circled).

On July 6, 1992, Petitioner filed Those Claims in a Second suit, as Cause #4-92CV1288SNL. Petitioner filed several motions to Consolidate the cases, all motions was denied. On May 28, 1993, Petitioner motion the First Trial Court for order, dismissing claims against HASLC Without Prejudice. On June 2, 1993, the Honorable Stephen N. Limbaugh granted that motion (See Exhibit #2). On June 14, 1993, the Honorable George F. Gunn, set aside dismissal without prejudice as to HASLC (See Exhibit #3). On July 1, 1993, when docket was called by clerk and Court asked if parties was ready, Petitioner announced "not ready" and requested a "Continuance to prepare for trial" request was denied. Petitioner was forced to put on a partial case due to lack off discovery material

properly requested, at the time petitioner's stated that he couldn't proceed, the Court granted all defendants a Rule 52(c) Motion.

On Sept. 27, 1993, the Second Trial Court, denied all motions to amended petition, denied motion to adstain, ruled that Petitioner waived his rights to recover in State Court, Granted motion to dismiss and summary judgment.

Those decisions was appealed to the United States Court of Appeals for the Eighth Circuit which upheld the District Courts' rulings.

Thereafter, this Petition For A Writ of Certiorari was timely filed.

REASONS FOR GRANTING THE WRIT

In Estelle, the Court held that a denial of time to prepare for trial violated Due Process, The Due Process Clauses of the 5th and 14th Amendments guarantee the right to a meaningful hearing.

The Court held that in order to be denied

Due Process rights, plaintiff must move for a Continuance. That Court ruled in that case that Two and One-half days to prepare for trial caused prejudicial error to inmate's cause. Comparing that decision to the issue in the instant case, where petitioner was given no time to prepare, announced not ready and was forced to trial.

Each Court denied leave to amended petition, contary to Rule 15(a) and rights in the claims, as stated by this Court in Logan v. Zimmerman Brush Co., 102 S. Ct. 1148 (1982).

In Boddie, this Court ruled that a Statute or a Rule may be held invalid if it deprive an individual of a protected right. The right is question in this case, was petitioner's rights to equal pay for equal housing under the Sec. 8 Programs.

Whether the Second trial court's judgment that the 1991 decision in Snelling v. HASLC, et al., #89-1752-C-7,

bars all claims of racial discrimination between the parties, Including claims subsequent to judgment. In Dawkins, the Court recognized that " Con not litigate facts that have not occurred".

The Second Trial Court's judgment that Petitioner waived his rights to recover by Dismissing his claim Without Prejudice, Conflicts with this Court's decision in Migra v. Warren City School Dist. BD. Of Ed. 104 S. Ct. 892(1)(1984).

The Courts' over looked the claim in Count VI, for retailation for attending and testifying in the Courts against HASLC and Law Firm. In Kush, 460 U.S at 726, this Court set the standards for stating a claim for denial access to federal Court.

The Writ sought should be allowed for review and decision of the important constitutional questions in this matter.

ARGUMENT

This Court held in Ungar v. Sarafite, 84 S. Ct. 841, 849(5-6)(1964), that

> There are no mechanical tests for deciding when a denial of a continuance is so arbitary as to violate due process, the answer must be found in the circumstances presented in every case, particularly in the reasons presented to the trial judge at the time the request is denied", Quoting from Nilva v. United States, 77 S. Ct. 431(1964).

In that case this Court found that no violation of Due Process occurred because, Petitioner had all necessary witnesses, evidence and the issues limited and clear-cut. In the case now before this Court, Petitioner requested a continuance because respondents HASLC and HASL, intentionally held the requested documents until the dates of scheduled trial. HASLC complied with the request on June 28, 1993, the date of the first trial setting, HASL never complied with request.

This case is similar to that in Williams v. Estelle, 566 F. Supp. 1376.

in that case, the Petitioner complained that he were prejudice and denied a fair trial when the defendants tendered their pretrial material on the day of trial. On Appeal, the Court reversed the Jury verdict and granted the plaintiff a New Trial. In the First case that was tried before the Court, respondent HASLC tendered the requested documents on June 28, 1993, the original trial date, HASL did tender any documents between April 7, 1993, date of request and July 1, 1993, date of trial. On June 30, 1993, the Court ordered respondent HASL to comply with petitioner's request, on July 1, 1993, in the Court, respondent HASL gave petitioner a partial list of documents, Petitioner announced not ready and requested a continuance to prepare for trial due to the lateness and partial submission by HASL. The trial Court denied the request for continuance and stated " If you'er not ready today you

wan't be ready tomorrow" It is understood that District Court has wide discretion within rules to determine manner and course of discovery, See Eggleston v. Chicago Journeymen Plumbers, Inc, 657 F. 2d 890 (7th Cir. 1981), But it is also an gross abuse of discretion when it results in the unfairness of the trial, See Lewis v. Texico, Inc., 527 F. 2d 921, 926(2nd Cir. 1975). Petitioner's position is that, while the trial Court may not have fore seen the unfairness of its order denying petitioner's request for a continuance to prepare for trial, because of the lateness of the discovery material, such order of denial did result in a unfair trial, See Voegeli v. Lewis, 567 F. 2d at 96(5)(8th Cir. 1977). The trial Court granted respondents motion to deny Petitioner the right to call certain witnesses, See Loinaz v. EG & G, Inc, 910 F. 2d 1(5)(1990). Denied petitioner the

opportunity to prosecute his claim against HASL, in Conflict with this Court's decision in Hansberry v. Lee, 311 U.S. 31 (1940).

The Court rushed petitioner to trial, as a case similar was decided "Court should not allow its zeal for clearing its calender to overcome party's right to full and fair trial", See Beary v. City of Rye, 601 F. 2d 62. 63(2nd Cir. 1979). Petitioner was in no way responsible for the delay; and should not be force to pay with his cause of action, for acts of respondents .

The First trial Court's judgment that the Housing Authorities actions, to deny properties owned by petitioner from participation under the Sec. 8 Programs was sanctioned by H.U.D.'s regulations is without support.(H.U.D. submitted answer to Interrogatories that it didn't delegate authority to Housing Authorities to deny Housing from participating under the Sec.

8 Certificate/ Voucher Programs under Rent Reasonableness), See Exhiit #4), is in conflict with H.U.D.'s submissions to the Court and 24 CFR Ch. VIII 4-1-89 §882.106(b)(1)(i) and §887.209(b)(3).

The Court went on to say that, no constitutional rights of Petitioner had been violated by respondents actions and no discrimination took place.

In any case, Petitioner's complaint was that the Regulations was being used Unconstitutionally by the Housing Authorities, Petitioner cited the Ruling of this Court in Buchanan v. Warley, 245 U.S. 60, (1917), and Boddie v. Connecticut, 91 S. Ct. 780, 787(13) (1971).

Petitioner also cited H.U.D. and its agents for violating its duty under the Fifth and Fourteenth Amendments to the United States Const. and requested Injunctive Relief, the trial Court didn't address the injunctive issue, ruling that

it found no discrimination on the part of either respondent and that all acts complained off, was within guide-lines of H.U.D.'s Rules. It is further Petitioner's position that the First trial Court on June 27, 1992, when denying Petitioner's motion to amended petition and add claims and parties, infringed upon petitioner's rights to Equal Protection and excess to the Court.

Petitioner stated to the First Trial Court that, he could not continmue without the requested documents from HASL, the Court entered a Rule 52(c) motion for all respondents.

the judgment in the First case was upon a incomplete trial, caused by respondents HASLC and HASL and that the judgment can only be clearly erroneous and a mistake and reversal is required, See United States v. United States Gypsum Co., 333 U.S. 364, 395(1948).

In The Second Court, Petitioner motion for leave to amended petition, so as to remove unclear allegations, the Court denied and not keeping with the spirit of Rule 15(a), Also See Buder v. Merrill Lynch, Pierce, Fenner & Smith, 644 F. 2d 690, 694(4) (8th Cir. 1981). Such denial by the Second trial court, denied petitioner equal excess to the Courts. in violation of Constitional rights under Mo. Art. 1, §2 and §14, U.S. Const. Amend. 5 and 14th.

That the second trial court accertions that Cause #4-92CV1288 was th same complaint as in 1989 and thereby, barred by the Doctrine of Res Judicata and Collateral Estoppel is not supported by the cited case Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1982). The Court in its assesement of the complaint, cites the same course of conduct (Racial Discrimination) as its reasoning. Such decision is in conflict with other Circuits and this Courts rulings.

A similar case as the instant case was adjudged not Res Judicata in the 10th Circuit, See Manning v. City of Auburn, 953 F. 2d at 1359(7)(1992), also See Lawlor v. National Screen Service Corp. 75 S. Ct. 865, 868(5-7) (1955).

The Court discussed other reasons and case law to support its judgment, none are supportive when the whole record is examined. Under Murphy v. Jones, 877 F. 2d 682, 684(8th Cir. 1989), for the claim to come within the requirements of the Doctrines, the case must be against the same parties or their privies. In this case, Only HASLC was a party to cause #89-1952-C-6 and the claims against it in the present case occurred after judgment in June 1991; See Dawkins v. Nabisco, Inc., 549 F. 2d 396, 397(5th Cir. 1977), as stated above; The Second trial Court's accertion that Petitioner waived his rights to recover when dismissing prior landlord-tenant claim

Without Prejudice has no support. The case in question was between Petitioner and Queen Stephenson, Case #910-08249, Under Missouri Law, See Cook v. American Maintenance Co., 588 S.W. 2d 171(1979). Petitioner can maintain Separate actions for Rent and Possession and the dismissal without prejudice of the money issue did not subject its recovery to the Doctrine of Res Judicata or Collateral Estoppel. This Court ruled in Kremer v. Chemical Constr, Corp., 456 U.S. 461 (1982), federal Courts must "give the same preclusion effect to State Court judgments that those judgments would be given in the Courts of the State from which the judgment emerged". Under V.A.M.R Rule 67.03, "A dismissal without prejudice permits the party to bring another civil action for the same cause, unless the civil action is otherwise barred"; and in any event, the money issue had not fully accural by

the State Court's order, staying execution until Oct. 1, 1991. See Exhibit # 5 and# 6.

The Second Trial Court's judgment that it lacked jurisdiction over Count I of Petitioner's complaint, based that ruling on the application of Res Judicata to Defendants Queen Ester Stephenson and HASLC. Even under the opinion of this Court in Parklane, 99 S. Ct. 645, privity must still exist between the parties of a prior suit, in the case relied on by the Court, State Landlord-Tenant Case #910-08249, [t]here were no final judgment on the money issue (Dismissed Without Prejudice) and HASLC wasn't a party to that case. This Court held in Union & Planters' Bamk v. Memphis, 23 S. Ct. 604(1903), Federal Court "Can accord [a Sate judgment] no greater efficacy" that would the judgment rendering State. In Missouri under Rule 67.03, a dismissal without prejudice, allows another suit on the same cause of action.

The Court decided the complaint on respondents' affidavit but failed to consider petitoner's affidavits and exhibits in opposition to summary judgment, or the claim for Retailation under 42 U.S.C. §1985 (2), Celotex Corp. v. Catrett, 106 S. Ct. at 2553(7) (1986).

CONCLUSION

For the reasons stated above, a Writ of Certiorari should be allowed to review the judgments, opinions and Constitutional issues presented to the Courts.

DATED: SEPTEMBER 20, 1995

RESPECTFULLY SUBMITTED BY,

LONNIE SNELLING
1518-79TH Street
U. City, Mo. 63130
(314) 862-8279
Petitioner - Pro se

CERTIFICATE OF SERVICE

A true copy of the foregoing was hand-delivered to respondents/attorneys of record, Joe D. Jacobson, 7733 Forsyth Blvd., Suite 800, St. Louis, Mo. 63105, Wesley D. Wedemeyer, 1114 N. Market St., St. Louis, Mo. 63101 and Charles Ford, 222 S. Central Ave., Suite 500, St. Louis, Mo. 63105, on this 20th day of September, 1995.

APPENDIX

PAGE

Opinion of U.S. Court of Appeals For the Eighth Circuit A-2

Judgment of the District Court for the Eastern District of Missouri Case #91-1952-C-6 A-6

Judgment of the U.S. District Court for the Eastern District of Missouri Case #4-92CV1288 A-7

Denial of Motion for Rehearing with suggestions for rehearing Enbanc A-41

Grant of extension of time to file Petition For A Writ Of Certiorari A-
& Exhibit # 7

Missouri R. C. Pro. Rule 67.03 A-
Exhibit #.8

U.S. Const. Amendments 5 and 14th A-
Exhibit #.9

24 CFR Ch. VIII 4-1-89 §882.106(b)(1)(i) and §887.209(b)(3) A-
Exhibit # 10 & 11

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

No. 94-2039

LONNIE D. SNELLING, *
Appellant. *
*
vs. *
*
Samuel R. Peirce, Secretary *
of the U.S. Department of *
Housing and Urban Development *
James Strassner; Housing *
Authority of St. Louis County; *
Queen Ester Stephenson; Shelley *
Rene Keeton; Vera Owens; Linda *
Jones; Sharon Williams; Curtis, *
Oetting, Heinz, Garrett & Soule, *
P.C. *
Appellees. Appeal from the United States District Court for the Eastern Distrist of Missouri

No. 94-2087

LONNIE D. SNELLING, *
Appellant. *
*
vs. *
*
Department of Housing and Urban *
Development; St. Louis County, *
St. Louis Housing Authority, *
Appellees. *
*

(Unpublished)

No. 94-2088

Lonnie D. Snelling, *
Appellee. *

Lonnie D. Snelling.
Appellee.

vs.

Department of Housing and Urban Development,
Defendant,

St. Louis County Housing Authority
Appellant,

St. Louis City Housing Authority,
Defendant,

No. 94-2290

Lonnie D. Snelling,
Appellee.

vs.

Samuel R. Pierce, Secretary of the U.S. Department of Housing and Urban development; James Strassner
Defendants.

Housing Authority of St. Louis County,
Appellant.

Queen Ester Stephenson; Shelley Rene Keeton; Vera Owens; Linda Jones; Sharon Williams;
Defendants.

Curtis, Oetting, Heinz, Garrett & Soule, P.C.
Appellant.

Submitted: April 11, 1995

Filed: April 17, 1995

Before BOWMAN, WOLLMAN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

These appeals have been consolidated. Lonnie Snelling appeals the District Court's[1] grant of defendants' motion for judgment as a matter of Law and denial of several pre- and post-judgment motions in his civil rights action, District Court No. 4:91-CV-1952. (Appeal No. 94-2087.)

The Housing Authority of St. Louis County (HASLC) cross-appeals the denial of its motion for attorney's fees under 42 U.S.C. §1988 and sanctions under Federal Rule of Civil Procedure 11. (Appeals No. 94-2088.) Snelling also appeals the district court's[2] adverse grant of summary

[1] The Honorable George F. Gunn, Jr., United States District Judge for the Eastern District of Missouri.

[2] The Honorable Stephen N. Limbaugh, United States District Judge for the Eastern District of Missouri.

judgment and denial of several pre- and post judgment motions in a second civil rights action, District Court No. 4:92-CV-1288. (Appeal No 94 2039.) HASLC and the law firm of Curtis, Oetting, Heinz, Garrett & Soule, P.C. (HASLC's counsel). Having carefully reviewed the record and the parties arguments, we conclude that the district court properly granted judgment to defendants in both actions below and did not abuse its discretion in denying either parties' various pre- and post-judgment motions.

Accordingly, the judgments are affirmed.

See 8th Cir. R. 47B.

We deny the motion seeking sanctions on appeal. like the district court, we forewarn Snelling that if he abuses the judicial system by filing another appeal based upon the same set of facts as these appeals, he risks the imposition of severe sanctions.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
(Eastern Division)

LONNIE SNELLING)
Plaintiff.)
vs.) Cause No. 91-1952-C-6
UNITED STATES DEPART-)
MENT OF HOUSING AND)
URBAN DEVELOPMENT,)
et al.,)
Defendants.)

JUDGMENT AND ORDER

Pursuant to the oral findings of fact and conclusions of law issued by this Court in open Court before the parties and counsel on July 1, 1993 following the close pf plaintiff's evidence in this non-jury trial,

IT IS HEREBY ORDERED, ADJUDGED AND DISCREED that the Court enters judgment in favor of defendants.

Dated this 1st day of July, 1993

GEORGE F. GUNN, JR.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
(Eastern Division)

LONNIE SNELLING, Plaintiff.	)	
vs.	)	
	)	Cause #4-92CV1288SNL
SAMUEL R. PIERCE, ET AL., Defendants.	)	

ORDER

This matter is before the Court on plaintiff's motion for abstention (#115), filed July 19, 1993. Responsive pleadings have been filed.

In his motion, plaintiff requests that this Court abstain from any further rulings in the present action because of the "pendency of posttrial motions now before the trial Court and possibility of further actions to settle the matter ...". Plaintiff is referring to his other lawsuit before the Honorable George F. Gunn. Defendants HASLC and Curtis, Oetting have informed the Court that there are

no pending settlement discussions with plaintiff. On July 1, 1993 after trial before the bench, Judge Gunn (in Cause No. 4:91CV1952GFG) ruled in favor of the defendants. The Court assumes that the post-trial motions that plaintiff refers to are ones that he has filed. Since Judge Gunn had previously declined to consolidate these cases, this Court sees no reason to hold its determinations in abeyance while the case before Judge Gunn lingers on.

Accordingly.

IT IS HEREBY ORDERED that the plaintiff's motion for abstention (#115) be and is **DENIED.** Dated this 27th day of September, 1993.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
(Eastern Division)

LONNIE SNELLING, Plaintiff.	)	
vs.	)	Cause #4:92CV1288SNL
SAMUEL R. PIERCE, ET AL., Defendants.	)	

ORDER

This matter is before the Court on the plaintiff's motion to reevaluate ruling of December 24, 1992 and June 30, 1993 (#110), filed July 8, 1993. Responsive pleadings have been filed.

In his motion, the plaintiff contends that the Court's order of June 30, 1993 was in error when it stated that plaintiff had been allowed to amend his complaint and substitute pages once before. The Court has review the court file and the docket entries in this case and has determined that the plaintiff is correct. Due to the pendency of Two similar lawsuits (brought

by plaintiff) and the large number of pleadings filed in both lawsuits, docket entries were misleading. The Court stands corrected and determines that all prior motions to amend the complaint, in Cause No. 4:92CV1288SNL, have been denied.

However, the Court stands by its prior decisions, as set forth in its order filed December 24, 1992 (#88) and June 30, 1993 (#109), and denies the plaintiff leave to amend his complaint.

Accordingly,

IT IS HEREBY ORDERED that the plaintiff's motion to reevaluate (#110), filed July 8, 1993, be and is **GRANTED** only in so far as to correct the Court's order of June 30, 1993 as to the disposition of the plaintiff's prior motions to amend or substitute.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
(Eastern Division)

LONNIE SNELLING, Plaintiff.	)	
vs.	)	Cause #4:92CV1288SNL
SAMUEL R. PIERCE, ET AL., Defendants.	)	

MEMORANDDUM

Pro se plaintiff has filed a six-count complaint alleging constitutional violations, breach of contract, tortious interference with contract, and conspiracy in connection with certain lease agreements for apartments under the Section Eight federal housing programs. This matter is before the Court on the defendants Housing Authority of St. Louis County (HASLC) and the law firm of Curtis, Oetting, Heinz, Garrett and Soule, P.C.'s (hereinafter simply referred to as the Law Firm) motion to dismiss and/or summary judgment (#33), filed September 24, 1992. Responsive

pleadings have been filed.

In the instant case, plaintiff seeks monetary and equitable relkief against HASLC, HUD, Five former tenants. Counts I thru V seek relief for alleged civil rights violations, contract breaches and torts arising from leases between the plaintiff and the Five named defendant tenants (Stephenson, Keeton, Owens, Jones, and Williams) for rental of apartments under the Section 8 Housing Voucher Program. Plaintiff alleges that these leases were not approved and the tenants were forced to move out because the plaintiff is black. Count VI is a conspiracy claim against defendant LaW Firm alleging that the Law Firm created false documentary evidence and conspired with HASLC to remove all of the plaintiff's tenants that participate in the Section 8 housing program. The Plaintiff invokes this Court's jurisidction under the Fifth and Fourteenth Amendments

and six (6) federal Statutes: 28 U.S.C. §1331 and 1343; 42 U.S.C.A. §1981, §1982, §1983, and §2000d.

Defendant HASLC and Law Firm contend that the instant case should be dismissed for three reasons. Firstly, they argue that Count I, which primarily directed against HASLC, HUD and defendant Queen Ester Stephenson, is barred under the doctrines of res judicata and collateral estoppel due to the directed verdict in favor of defendant HASLC in a prior federal action, Cause No. 89-1752-C-7 and a consent judgment entered in an earlier state action, Cause No. 910-08249. Secondly, they argue that the federal claims in Count I thru V are barred under the doctrines of res judicata and collateral estoppel due to a judgment (after bench trial) in favor of defendants HASSLC and HUD in ther prior federal action, Cause No. 91-1952-C(6). The defendants further argue that since

the federal claims in Count I through V are barred, the Court should decline to exercise pendent jurisdiction over the state claims of tort and breach of contract. Finally, the defendants argue that summary judgment should be granted in favor of defendant Law Firm on Count VI because a prior court has already ruled the claim to be frivolous and defendants' affidavits demostrate that no material issue of fact exist with regard to plaintiff's claim of manufactured evidence and conspiracy to remove Section 8 tenants from plintiff's property.

In order to properly address the defendants' motion, the Court must first summarily review the plaintiff's litigious history and repeated adversarial confrontation with HASLC and HUD. Mr. Snelling has been renting out Section 8 apartment since 1986. Since 1988, he has filed numerous complaints against HASLC

over rent payments and beginning in 1989, he has filed Three federal lawsuits, mainly directed against HASLC, alleging civil rights violations. it is the two prior federal actions which are of primary concern to this Court.

In 1989, based upon his third amended petition, plaintiff sued HASLC and Charles Gaebler (An HASLC employee) under several federal statutes (42 U.S.C. §§1981, 1983, 1986, and 2000d) alleging racial discremination with regard to the leasing of a Section 8 apartment, located at 3725 Page Blvd., to Queen Ester Stephenson on July 17, 1989. The lease was not approved by HASLC because the proposed rent was unreasonably high based upon comparable rents. Plaintiff sued alleging that HASLC was discreminating against him, as a black property owner, because it allowed white property owners to charge higher rents for similar housing. This case, Cause No.

P89-1752-C(7), was tried before a jury with United States Magistrate Judge William S. Bahn presiding, with consent of the parties pursuant to 28 U.S.C. §636(c). On July 1, 1991, Magistrate Judge Bahn entered judgment in favor of the defendants following a hung jury. He specifically held:

> The Court has concluded that absent the unfortunate racial overtone to the jury's deliberations, there could be but one conclusion as to a verdict that reasonable persons could reach in this case. There is an absence of any substantial evidence to prove liability. The plaintiff's evidence of an isolated incident which impliedly revealed that defendant allowed a white rehaber to upgrade a rent fix while denying plaintiff the rent he requested is insufficient. Defendant's actions in both cases were not at all racially inspired.

Cause No. 89-1752-C(7), Memorandum and Order Bahn, J., dated July 1, 1991. This judgment was later upheld in the Eighth Circuit Court of Appeals. See Snelling v. The Housing Authority of St Louis County, et. al., 960 F. 2d 1053

(8th Cir. 1992). (Unpublished opinion). Defendants' Exhibit A. In conjunction with the federal action 891752-C(7), plaintiff filed a state court action for rent and possession against Ms. Stephenson.

The state court case, Case No. 910-08249, was based upon the same set of facts as alleged in his federal action 89-1752-C(7). While the case was pending, plaintiff attempted to amend his petition to include claims of civil rights violations, breach of contract, and tort. The state court rejected the amendments. On September 13, 1991 plaintiff moved to dismiss the case. A consent judgment was entered into by which the plaintiff recovered the premises but waived any right to unpaid rent. Defendants' Exhibit B. Plaintiff returned to federal court with the civil rights, breaches of contract, and tort claims that had been rejected by the state court. He filed suit against HUD and HASLC, under

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28 U.S.C. §§1331 and 1343; and 42 U.S.C. §§1981, 1982, 1983, and 2000d, alleging discrimination practices by the defendants in approving Section 8 housing rental rates. In his Fourht Amended Petition, plaintiff alleges that the defendants' actions regarding rent reasonableness were/are racially discriminatory. He claims that the defendants, especially HASLC have engaged in a patten of racially discriminatory practices against African-Americans with regard to the operation of federally subsidized housing programs. He specifically claims that the HASLC approves rents and determines the amount of assistance to the tenant based upon the race of the property owner. In support of his claims, he refers specifically to rentals located at 5737 Cabanne ave., 5619-21 Maple ave., 5039 Kensington ave., and 3916 Lee ave., as wel, as other unspecified rentals. On July 1, 1993, after

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a bench trial, District Court Judge George F. Gunn entered judgment in favor of the defendants. Plaintiff currently has pending post-trial motions.

On July 16, 1992, plaintiff filed the present action. The instant action (92CV1288SNL) concerns the disapproval of the Stephenson Lease, as well as leases with Four other tenants, and a conspiracy claim against the Law Firm. Plaintiff's claims, based upon facts already presented in the other lawsuits, are for discrimination, breaches of contracts, and torts.

The Court has carefully reviewed the plaintiff's complaint ion the instant action, the court file in the instant action, the Thirdamended complaint in 89-1752-C(7) and the court file, the Fourth amended complaint in 91-1952C(6) and the court file, and the defendants' exhibits (including copies of documents regarding the state action 910-08249). It is this

court's considered opinion that the federal claims in the instant action are barred under the doctrines of res judicata and collateral estoppel.

"Under the doctrine of res judicata, a judgment on the merits in a prior lawsuit bars a second suit involving the same parties or their privies based on the same cause of action." Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979). The application of the doctrine of res judicata has three requirements: 1) the prior judgment was rebdered by a court of competent jurisdiction; 2) the prior judgment was a final judgment on the merits; and 30 the same cause of action and the same parties or their privies were involved in both cases. Murphy v. Jones, 877 F. 2d 682, 684(8th Cir. 1989), citing Headley v. Bacon, 828 F. 2d 1272, 1274(8th Cir. 1987). Even if a plaintiff raises a new theory of recovery in the second action, res judicata bars

all claims that were or could have been brought in a earlier action. See Brown v. St. Louis Police Dept., 691 F. 2d 393, 396(8th Cir. 1982); See also, Morris v. Christian Hospital, -F. 2d - (8th Cir. 1993)(Unpublished opinion, slip op. filed August 19, 1993, Cause No. 93-1396EM).

The doctrine of collateral estoppel is commonly considered to be a term which refers to "issue preclusion". Collateral estoppel is applicable to matters previously at issue which were directly and necessarily adjudicated. Lovell V. Mixon, 719 F. 2d 1373, 1376(8th Cir. 1983), citing Montana v. United States, 440 U.S. 147 (1979). "Under thew doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action." Parklane Hosiery Co. v. Shore, 439 U.S.

at 326 n.5 (1979). Collateral estoppel does not require mutuality of parties as long as the party against whom it is used had a full and fair opportunity and incentive to litigate the issue in the prior action. Lane v. Peterson, 899 F. 2d 737, 714(8th Cir. 1990). Under the doctrine of collateral estoppel, four criteria must be met before a determination in the first action is conclusive in the second action: 1) the issue sought to be precluded must be the same as that involved in the prior litigation; 2) that issue must have been actually litigated; 3) it must have been determined by a valid and final judgment; and 4) the determination must have been essential to the judgment. Lovell v. Mixon, at 1376.

The central issue to each of Mr. Snelling's federal lawsuits is his belief that HASLC is accusing him of seeking unreasonably high rent and disapproving

Section 8 leases because he is black. Each of his federal lawsuits presents a "different theory" of recovery, but the underlying claim remains the same. In 89-1752C(7), plaintiff focused in on the Stephenson lease, but his claim was that HASLC was discriminating against him with regard to Section 8 rentals because he is black. Judge Bahn specifically found that HASLC's action in disapproving Ms. Stephenson's lease was not racially motivated, but rather the evidence showed that the rents he charged were unreasonably high under the Section 8 guidelines. This finding was later affirmed by the Eighth Circuit Court of Appeals. In 91-1952-C(6), plaintiff broadens his Constitutional claims and makes general accusations against HUD and HASLC that they have engaged in a patten of racially discriminatory practices with regard to the operation of the Section 8 housing program. Again, plaintiff points

to dealings with HASLC in which he alleges that HUD and HASLC determine the amount of rent charged on Section 8 housing by the race of the property owner, and that he has been denied participation in the Section 8 program, not because his rents are too high, but because he is black. The dealings that he points to as examples of these "acts of discrimination" incklude, once again, the Stephenson lease, as well as leases on properties located at 5619-21 Maple ave., 5039 Kensington ave., and 3916 Lee ave. After a bench trial, in which Snelling had every opportunity to present evidence on his constitutional claims regarding HUD and HASLC's dealings with him, Judge Gunn found in favor of the defendants and specifically held that "[t]here's absolutely no evidence of any discrimination against the plaintiff based on race or evidence of plaintiff has been treated differently on rental requests

for any reason." Defendants HASLC and Law Firm's Exhibit G-Excert of proceedings before Honorable George F. Gunn, dated June 30, 1993. The instant complaint is nothing more than a REHASH OF Mr. Snelling's persistent claim that he is treated differently concerning the Section 8 rental rental properties because of his race. He again presents the same set pf facts regarding the Stephenson lease, and now list the leases for 3916 Lee ave., 5621A Maple ave., 5039A Kensington Ave., and 5039 Kensington Ave. (The same leases noted in cause No. 91-1952) as separate counts. Mr. Snelling sinply will not accept the fact that his claim of racial discrimination with regard to HASLC and HUD's dealing with him have been adjudicated twice as being without merit. The fact that he rewords his claima in each subsequent lawsuit does not make a difference. Every "new" issue he presents has risen in an

earlier proceeding or should have been raised in an earlier proceeding. It is clear to this Court that plaintiff's Constitutional claims in the instant action are either duplicative of the claims raised in 91-1952, or at the very least could and should have been raised in that lawsuit.

This Court finds that the plaintiff has sued defendant HASLC twice before alleging various constitutional violations (28 U.S.C. §§1331, 1343, 42 U.S.C. §§1981, 1982, 1983, 1986, and 2000d; and Amendments 5 and 14th) based upon race discrimination with regard to Section 8 rental properties owned by plaintiff. In each of the prior adjudications, plaintiff had a full and fair opportunity to present his claims to the presiding judge. In each of the prior adjudications, the presiding judge found total absence of any evidence to support the plaintiff's claims. The instant action is nothing more than a poorly

disguised attempt by the plaintiff to get another bite at the judicial apple. This Court finds that the Plaintiff's federal claims as contained in Count I thru V of the instant action are barred under the doctrine of res judicata and collateral estoppel.

As for Count VI, the Court further finds that plaintiff's claim of conspiracy is also barred under the doctrine of res judicata. The Court agrees with the finding of Judge Gunn that this claim is frivolous. See, Memorandum of District Court Judge George F. Gunn, filed June 17, 1992, pg. 4.[1] Even if this claim were not barred by res judicata, the Court would still grant summary judgment in favor of defendant Law Firm. Defendant has presented evidence (Affidavits and other documents in support) to demostrate the frivolity of the claim and that it has no basis infact or law. Plaintiff has failed to set forth any

affirmative evidence or specific facts showing that there is a genuine dispute on this issue. City of MT. Pleasant v. Associated Electric Coop., 838 F. 2d 168, 274 (8th Cir. 1988).

As for the remaining state claims of breaches of contract against the five individual tenants, the Court declines to exercise pendent jurisdiction over these claims, and these claims also shall be dismissed.

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[1] Plaintiff's state claims against the five former tenant and the Law Firm are the amendments contained in the Second Amended Petition that Judge Gunn rejectyed in Cause No. 91-1952-C(6). He felt that the Amendments pertaining to the Five former tenants would do nothing more that confuse the issue already present in the lawsuit; and that the amendment pertaining to the Law Firm was frivolous.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
(Eastern Division)

LONNIE SNELLING, Plaintiff.	)
vs.	) Cause
#4:92CV1288SNL	)
SAMUEL R. PIERCE, et al., Defendants.	)

MEMORANDUM

Pro se plaintiff has filed a six-count complaint alleging constitutional violations, breach of contract, tortious interference with a contract, and conspiracy in connection with certain lease agreements for apartments under the Section Eight federal housing programs. This matter is before the Court on defendant United States Department of Housing and Urban development's (HUD) motion to strike plaintiff's complaint or in the alternative, motion to dismiss (#24) filed September 4, 1992. Plaintiff has filed a responsive pleading.

This Memorandum is a companion piece to another memorandum filed this same date in this cause of action. The Court incorporates by

reference the litigation history behind the instant action. The Court further incorporates by reference any factual and/or legal findings relevant to the present motion.

Defendant HUD seeks to strike the present complaint because it contends that the matters contained within it are similar to the claims which Mr. Snelling had in a prior federal lawsuit, Cause No 91-1952C(6). In the alternative, defendant HUD seeks to dismiss the present lawsuit for lack of subject matter jurisdiction under the jurisdictional allegations contained in the complaint, and the lack of HUD's waiver of immunity (by statute or otherwise) for any of the claims made by the plaintiff.

The Court has carefully reviewed the present complaint and the Fourth Amended Petition that was litigated in Cause No. 91-1952-C(6). This has already

found that plaintiff's constitutional claims against defendant HASLC are barred by the doctrine of Res Judicata and collateral estoppel. However, a close examination of the two complaint indicates that plaintiff's claims against HUD in 91-1952 were for discriminatory practices, while his only claim against HUD in the present case appears to be one for breach of contract. Consequently, the claims are technically not so similar so as to justify striking the plaintiff's present complaint.

A review of the present complaint reveals that defendant HUD is refered to only in Count I. Under Count I, plaintiff alleges that he entered into a lease agreement with defendant Queen Ester Stephenson from July 17, 1989 to October 1991 for Section 8 housing. Defendant Stephenson held a voucher certificate of 231.00 per month for the

duration of the lease agreement. Snelling alleges that although HUD disbursed $6237.00 to defendant HASLC as payment to plaintiff for defendant Stephenson's rent subsidy, he never recieved any of it. He further claims that he gave "notice" to HUD of the non-payment, but that HUD never did anything to correct the problem or make payment directly to the plaintiff. In Count I, Snelling seeks $7985.00 in actual damages, $6237.00 in equitable damages for money not recieved, and $10.000.00 in punitives.

Although plaintiff intermingles claims of various constitutional violations in Count I, it is clear that his only claim against defendant HUD is baseed upon a breach of contract theory. His only allegation in Count I against HUD is contained in Paragraph 8 of the count and reads:

> That defendant U.S. Department of Urban Development was given notice that the payment was not being made, in September 1990. That no action was taken by the Federal Agency to correct the problem or to make payments direct to plaintiff, but instead continue to disburse funds to the Housing Authority of St. Louis County for the voucher in question.

The rest of the allegations in Count I through Count V (Count VI is directed at the Law Firm only) are allegations of discriminatory actions by HASLC. There are no allegations of any partiular discriminatory action HUD took with regard to any of the leases named in the complaint. It is this Couirt's considered opinion, that unlike Cause No 91-1952, plaintiff's claim against HUD is strictly an attempt to state a contract claim and that plaintiff seeks only monetary relief from HUD.[1]

Since HUD is a federal agency, any suit against it for monetary damages is actually a suit against the United States. Dugan v. Rank, 372 U.S. 609 (1963). The

United States is immune from suit for monetary damages absent a staturory or some other type of congressional waiver of the government's sovereign immunity. United States v. Testan, 424 U.S. 392, 399(1976); United States v. Sherwood, 312 U.S. 584, 586(1941). A waiver of sovereign immunity " Cannot be implied but must be unequivocally expressed." United States v. King, 395 U.S. 1, 4 (1979).

The plaintiff has failed to cite to this Court any basis for a waiver of sovereign immunity in the present action.[1] Instead, he urges the Court to simply use judge Gunn's denial of a similar motion by HUD in Cause No. 91-1952-C(6) as the

[1] In fact, Snelling concedes this point. In Paragraph 5 og the plaintiff's response to HASLC's motion to dismiss, filed Octber 5, 1992, plaintiff states "[t]here is nothing in Count I about race of any defendants or plaintiff or that this is a racial issue, its about money (all green).

sole basis for denying the present motion. However, as already pointed out, in Cause No. 91-1952-C(6), although plaintiff named HUD in only the first count of that complaint also, he specifically not only sought restitution of sums allegedly discriminatorily denied to African-Americans in the past, but also other unspecified conpensatory and consequential damages, as well as injunctive relief. In the present action, plaintiff clearly seeks, only in Count I, monetary relief associated with the Stephenson lease. Consequently, a large portion of Judge Gunn's order is inapplicable to this case.

However, since the plaintiff is pro se, the Court will examine any possible basis for jurisdiction over HUD pursuant to the circumstances of the present action.

The Tucker Act, 28 U.S.C. 1346(a)(2) and 1491 provides a waiver of sovereign

immunity and grants jurisdiction as to claims for monetary relief in suits against the United States. However, its waiver of sovereign immunity is very specific. It provides district court jurisdiction for any "civil action or claim against the United States, not exceeding $10.000.00 in ampount, founded either upon the constitution, or any Act of Congress, or any regulation of an executive department, or upon any expres or implied contract with the United States, of for liquidated or unliquidated damages in cases not sounding in tort...."

Although the plaintiff vaguely alleges some type of breach of contract in Court I, he fails to discribe thse nature of the contractual relationship between himself and HUD. The evidence before the Court demostrates that the contract at issue in Count I is a lease signed between himself and Ms. Stephenson, subject to

approval by HASLC. Plaintiff has failed to provide affirmative evidence or set forth specific facts showing that a contract or contratual relationship exists between himself and HUD. Thus, there is no waiver of immunity and granting of jurisdiction under the Tucker Act. Assuming arguendo, that the plaintiff had made a showing sufficient to establish the existence of a contract or contratual relationship between himself and HUD, jurisdiction in this Court would still not be available. Plaintiff's claim for monetary relief in Count I seeks damages in excess of $10,000.00; therefore, the only appropriate forum for such a claim is in the United States Court of Federal Claims. See, 28 U.S.C. §1491.

Since the plaintiff has failed to establish a waiver of sovereign immunity for his monetary claim against the United States as contained in Count I of his

complaint, this Court is without jurisdiction over the defendant HUD, and dismisses plaintiff's complaint as to defendant HUD.

Dated this 27th day of September, 1993.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
(Eastern Division)

LONNIE SNELLING, Plaintiff.	)	
vs.	)	Cause #4:92CV1288SNL
SAMUEL R. PIERCE, et al., Defendants.	)	

ORDER

In accordance with the Memorandum filed herein this day,

IT IS HEREBY ORDERED that defendant HUD's motion to strike (#24-1), filed September 4, 1992, be and is **DENIED.**

IT IS FURTHER ORDERED that defendant HUD's motion to dismiss (#24-2), filed September 4, 1992, be and is **GRANTED.** This cause of action is hereby **DISMISSED** and all pending motions are **DENIED** as moot.

No further action is to be taken in this case.

Dated this 27th day of September, 1993

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

No 94-2039/2290/2087/2088EMSL

Lonnie D. Snelling,

Appellant/Cross-Appellee.

vs.

Samuel R. Pierce, et al.,

Appellees/Cross-Appellants.

* Order Denying Petition for Rehearing and Suggestions for Rehearing En Banc

The Suggestion for Rehearing en banc is denied,

The petition for rehearing by panel is also denied.

May 25, 1995

Order Entered at Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit